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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA EX REL. LEO STAPF,
PETITIONER

v.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the District Court (R. 20) has not been reported. The *per curiam* opinion of the Circuit Court of Appeals for the Second Circuit (R. 23) is reported in 54 F. (2d) 1086.

JURISDICTION

The judgment sought to be reviewed was entered January 12, 1932. (R. 23–24.) The petition for certiorari was filed February 29, 1932, and

granted April 11, 1932, 285 U. S. 535. (R. 24.) The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the case has abated because the substitution as Commissioner of Immigration of the respondent Corsi as a party to the litigation was not moved within the time prescribed by Section 11(a) of the Act of February 13, 1925.

2. Whether the order of deportation was lawful.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Immigration Acts of 1917 and 1924 and of the other statutes involved, together with the applicable regulations issued by the Secretary of Labor, are printed in the Appendix. (*Infra*, pp. 18–25.)

STATEMENT

Petitioner, a German alien, first came to this country apparently as a member of the crew of a German vessel. He was not regularly admitted for permanent residence. He deserted his ship, S. S. *Hansa,* on February 15, 1923 (R. 2, 15), and remained in this country until March, 1929, when he signed as a member of the ship's crew aboard the American vessel, S. S. *America,* for a voyage to Germany and return (R. 2). The ship stayed in Germany two and a half days. (R. 11.) He arrived back in this country on either April 1st or

15th, 1929. (R. 3, 5, 7, 11.) He was discharged from the vessel at the end of the voyage, but was not examined by any immigration officer, was not in possession of an immigration visa, and did not pay a head tax. (R. 11–13.) On March 20, 1931, a warrant was issued for petitioner's arrest. (R. 6.) This warrant charged that petitioner had remained in the United States for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Secretary of Labor thereunder. He was accorded a hearing by the immigration authorities on March 27, 1931 (R. 8), at which time he stated, among other things, that he was employed as a butcher in a hotel in Key West, Florida (R. 10). The immigration authorities found that the charge recited in the warrant of arrest was sustained, and a warrant of deportation issued on April 3, 1931. (R. 18–19.) Petitioner thereupon filed in the United States District Court for the Southern District of New York a petition for a writ of habeas corpus, which alleged that he was illegally detained under the warrant of deportation for the reason that as he had been in this country more than eight years since his original entry in 1923, deportation was barred by the provisions of Section 34 of the Immigration Act of 1917, the continuity of his residence not being broken by the trip abroad in 1929. (R. 2–3.) The writ issued (R. 1–2) and a return was filed by the immigration authorities (R. 3–5). After a hearing the District Court ordered that the writ

be dismissed. (R. 20.) An appeal from this order was taken to the Circuit Court of Appeals for the Second Circuit, but the order was affirmed by a *per curiam* decision rendered in open court. (R. 23.)

SUMMARY OF ARGUMENT

We do not now urge the suggestion of abatement. The statute relative to the appointment of Commissioners of Immigration is unique in that the office is vacated not at the expiration of the term of an incumbent but when a successor is appointed. This Court has held that under a similar State statute a resignation to become effective must be followed by the additional fact of the appointment and qualification of a successor. Although the resignation of Day as Commissioner of Immigration was accepted in September, 1931, the successor was not appointed until October 10, 1931. Petitioner's request that the case be continued against the successor was filed on April 2, 1932, within six months of the recess appointment. As this complies with the statutory requirement for the substitution of a successor in office, we do not press the suggestion of abatement.

The original entry of the petitioner into this country in 1923 did not entitle him to remain permanently. As an alien seaman he was entitled to temporary admission to this country to reship to a foreign port. When he remained here he was subject to arrest and deportation. But the statu-

tory limitation of three years' residence here after his original entry prevented action for his deportation on that ground. Consequently, in 1926, although unlawfully here, he had acquired a right to remain. But when he returned to this country as a member of the crew of the ship *America,* after a round-trip voyage to Germany, his arrival constituted a new entry to the country. Although this entry was not unlawful in that as an alien seaman he was permitted sixty days in which to reship foreign, his stay here in excess of that period was unlawful and subjected him to deportation. The order of deportation issued in this case was based on the petitioner's unlawful stay in this country after his entry in 1929. It is in no way based on the entry in 1923 or continued residence here after his original temporary admission had expired. The petitioner's contention that his original residence in this country was not interrupted by the voyage to Germany and return is not in accord with the decision of this Court in *United States ex rel. Claussen* v. *Day,* 279 U. S. 398.

ARGUMENT

I

THE SUGGESTION OF ABATEMENT DOES NOT APPEAR TO BE SUPPORTED BY THE DECISIONS OF THIS COURT

In reply to the petition for certiorari the Government filed a suggestion that the case had abated. In the writ of habeas corpus Benjamin M. Day, Commissioner of Immigration, was named as respond-

ent, and the return to the writ was filed on his behalf. Day, we are advised by the Department of Labor, was reappointed as Commissioner on April 5, 1930, and held office when the writ issued. After the writ of habeas corpus had been dismissed by the District Court and the case had been appealed to the Circuit Court of Appeals, Day, on September 2, 1931, submitted his resignation. It was accepted by the President on September 22, 1931, but was considered by the Department of Labor to become effective September 10, 1931, when Day's annual leave apparently expired. On August 17, 1931, Irving F. Wixon became Acting Commissioner (Day being on leave from that date). Wixon served through October 31, 1931. The present Commissioner, Edward Corsi, took office on November 1, 1931, under a recess appointment signed October 10, 1931. He was nominated for the position on December 14, 1931, and confirmed on December 21, 1931. Following this confirmation his commission, dated December 21, 1931, was signed on December 30, 1931.

It was also pointed out in the Suggestion of Abatement that "the record shows no substitution of any party defendant, and we are informed by the Clerk of the Circuit Court of Appeals for the Second Circuit that no order substituting either Wixon or Corsi for Day has been entered in that court and that the docket of the District Court Clerk's office does not show that any order of substitution was

entered in the District Court." It was argued that the case had abated because under Section 11 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780), *infra*, p. 18, the time for substituting Corsi as a party expired not later than March 10, 1932, six months from the date Day's resignation was considered to be effective.

However, in his reply to the Suggestion of Abatement petitioner called attention to the Act of August 18, 1894, c. 301, Section 1, 28 Stat. 372, 391 (U. S. C., Title 8, Sec. 107), which provides:

> The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, *and until their successors are appointed;* * * *. (Italics ours.)

It was argued that this statute had the effect, despite Day's resignation, of continuing him in office until at least the recess appointment of Day's successor, Corsi. Petitioner's reply brief was filed in this Court on April 2, 1932, and, in accordance with his construction of the statute, he contended that there was still time under Section 11(a) of the Act of 1925 to seek a substitution, and accordingly requested this Court to permit the cause to be continued against Corsi.

Section 11(a) of the Act of 1925 permits substitution where a Federal officer "dies, resigns, or otherwise ceases to hold such office." In such an

event substitution of a successor may be made if cause is shown therefor within six months after the predecessor's "death or separation from the office." The ultimate question is whether, under a statute such as the one under which Commissioners of Immigration are appointed, the officer ceases to hold office or is separated from his office when he resigns and his resignation is accepted by the President. We are not concerned with what effect the death, removal from office, or suspension of a Commissioner of Immigration may have upon his tenure of office.

The statute under which Commissioners of Immigration are appointed was introduced on the floor of the Senate at the instance of the Senate Committee on Immigration as an amendment to a bill making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and was adopted without debate or comment. (Cong. Rec., Vol. 26, Part 8, p. 8063.) Although it is similar to some of the earlier Federal statutes relating to the appointment of public officers (see 17 Op. A. G. 648, 649), we have found no case arising under these statutes which throws any light on the question involved. However, the statute finds its counterpart in a number of State statutes relating to the election and appointment of public officials. While there are apparently but few decisions construing such statutes where the resignation of an officer is in-

volved, these decisions are practically unanimous in holding that the officer continues in office and is not relieved from his duties and responsibilities as such officer until his successor has qualified, even though he has tendered his resignation and such resignation has been accepted by the proper authority. This Court, in *Badger* v. *United States ex rel. Bolles,* 93 U. S. 599, considered an Illinois statute providing for the election of certain town officers who were to hold their offices for specified terms and "until their successors are elected and qualified" and held that, having submitted their resignations, which had been duly accepted by proper authority, the officers in question, nevertheless, remained in office until their successors were qualified.

We see no escape from the controlling effect of that decision in the instant case. Other decisions supporting the view taken by this Court in the *Badger case* are *Amy* v. *Watertown* (*No. 1*), 130 U. S. 301, 315; *United States* v. *Justices of Lauderdale County,* 10 Fed. 460 (C. C., W. D. Tenn.); *United States* v. *Green,* 53 Fed. 769 (C. C., W. D. Mo.); *People* v. *Supervisor,* 100 Ill. 332; *Jones* v. *City of Jefferson,* 66 Tex. 576; *State ex rel. Wheeler* v. *Nobles,* 109 Wis. 202; *State* v. *Harrison,* 113 Ind. 434; 25 Op. A. G. 636. The only contrary authority we have found is *Olmsted* v. *Dennis,* 77 N. Y. 378, 386. It was said of this decision in a note in 36 Am. St. Rep. 527 that the rule announced therein "is not supported by reason or the weight of current authority."

As petitioner's reply to the Government's Suggestion of Abatement requested that the cause be continued against Corsi, and as that reply was filed on April 2, 1932, which was within six months of the recess appointment of Corsi, we consequently do not, in view of the decisions cited, press the contention that the action has abated.

In view of our position, we deem it unnecessary to discuss the contention that Wixon under the statutes which petitioner cites was not qualified to serve as an Acting Commissioner of Immigration. In any event the statutes indicate that Wixon may not be regarded as Day's successor in office. R. S. 178 (U. S. C., Title 5, Sec. 5), *infra*, p. 19; R. S. 179 (U. S. C., Title 5, Sec. 6), *infra*, p. 19.

II

THE ORDER OF DEPORTATION WAS LAWFUL

The petitioner's desertion as a member of the crew of the S. S. *Hansa* on February 15, 1923, did not entitle him to remain in this country permanently. The provisions of Section 32 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 895 (*infra*, p. 20), only permitted alien seamen to enter the country temporarily for the purpose of reshipping to a foreign port. That he deserted and did not comply with the requirements for temporary admission as an alien seaman is not significant. *Philippides* v. *Day*, 283 U. S. 48. If the entry was lawful it was only for a temporary purpose. When

he abandoned this purpose his continued presence here rendered him subject to arrest and deportation unless he could establish his qualification for permanent admission under the provisions of Section 34 of the Immigration Act of 1917 (*infra,* p. 21). However, upon the expiration of three years after his original entry he could not have been deported, and since he remained in this country more than three years, he was not subject to deportation on any ground relating to his original entry or his continued presence here thereafter. The Immigration Act of 1924 in no way qualified or limited his status under the Act of 1917 so long as he remained in this country (Act of May 26, 1924, c. 190, Sec. 14, 43 Stat. 153, 162; U. S. C., Title 8, Sec. 214, *infra,* p. 22). Consequently the present proceedings and the alleged unlawful presence of the petitioner in this country in no way depend upon his original arrival in 1923. The validity of his deportation depends upon his entry in 1929 and his continued presence here.

In March, 1929, the petitioner joined the crew of the American vessel S. S. *America* for a trip from New York to Germany and return. He arrived, upon completion of this round-trip voyage, in New York in April, 1929, and was discharged as a member of the crew from that vessel. The record does not disclose that the petitioner was admitted for permanent residence at that time. The necessary formalities for this kind of admission apparently

were not complied with. The petitioner does not claim that he was then admitted for permanent residence. He was not inspected, paid no head tax, and had no immigration visa. (R. 11–13.)

But his entry was lawful for a temporary stay under the provisions of Sections 3 (5), 15, and 19 of the Immigration Act of 1924, c. 190, 43 Stat. 153, 162, 164 (U. S. C., Title 8, Secs. 203, 215, 166), *infra*, pp. 21, 23. Under the regulations prescribed by the Secretary of Labor under these sections (*infra*, p. 24), the petitioner, as an alien seaman, was allowed a period not in excess of sixty days to remain in this country for the purpose of reshipping foreign. The petitioner remained in excess of the sixty days and was apprehended on or about March 20, 1931. Section 14 of the Immigration Act of 1924 (*infra*, p. 22) requires the deportation of alien seamen who remain in this country beyond the period of sixty days permitted by the regulations.

The arrival in April of 1929 in the United States of the petitioner as a member of the crew of the American ship *America* was an entry into this country notwithstanding that the round-trip voyage was on an American vessel. *United States ex rel. Claussen* v. *Day*, 279 U. S. 398. The ship *America*, on which the petitioner made his voyage from New York to Germany and return in 1929, remained two and a half days in Bremerhaven. (R. 11.) Consequently when petitioner arrived in New York from Germany it was a "coming from

outside" and "an arrival from some foreign port or place."

Although the petitioner did not comply with any of the regulations relative to an entry as an alien seaman (Rule 6, subdiv. E, pars. 1, 4, Immigration Rules of March 1, 1927, *infra*, pp. 23–24), the fact of entry is controlling. He had no right to enter or remain here except in accordance with the law. *United States ex rel. Polymeris* v. *Trudell*, 284 U. S. 279. That he entered without permission does not entitle him to more than sixty days' stay in this country. *Philippides* v. *Day, supra.* When he remained here more than sixty days he became subject to deportation under the provisions of Section 14 of the Act of 1924 (*infra*, p. 22). This is the basis of the deportation order issued in the instant case.

The petitioner contends that under certain statutes which he cites, a typical example of which is Section 295 of the Criminal Code (originally R. S. 5363), *infra*, p. 20, the master of the ship *America* was obliged to bring him back to this country after the completion of the round-trip voyage on which he had shipped. From this the petitioner concludes that his entry in April of 1929 was not unlawful and that he acquired the right to remain here permanently. *Weedin* v. *Okada*, 2 F. (2d) 321 (C. C. A. 9th); *Matsutaka* v. *Carr*, 47 F. (2d) 601 (C. C. A. 9th). But the obligation of the commander of the ship *America* in no way extended the right of the petitioner to remain here longer

than the period permitted by the statutes and regulations. Conceding that petitioner's entry was not unlawful, as an alien seaman it was for a limited period only and not for permanent residence. When he remained here longer than the authorized sixty days he became subject to deportation. The question of his deportation because of the illegality of the entry is not involved. The authority of the Secretary of Labor to deport petitioner is predicated on his remaining in this country in excess of the permitted period rather than the manner of entry.

It might be urged that since petitioner could not have been deported more than three years after he originally came to this country in 1923, when he was discharged as one of the crew of the ship *America* in 1929, he was an "immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad," and enjoyed the status of a nonquota immigrant as defined by Section 4 of the Immigration Act of 1924 (*infra*, p. 22). But the difficulty with this position is that the petitioner was not lawfully admitted for permanent residence in 1923, when he first came here. In *United States ex rel. Georgas* v. *Day*, 43 F. (2d) 917 (C. C. A. 2d) it is said (p. 919):

> Leave to "land" in order to reship is quite another thing from being "admitted"; section thirty-three [1917 Act] makes the distinction in terms. Such leave gives no more than a short, though indefinite, time within which the seaman must find a new berth.

Admission on the other hand is an act of the authorities, accepting the alien into the body of our inhabitants, not indeed as a citizen, but as a possible resident, whose stay may be permanent unless something unforeseen happens. A seaman who breaks his leave can not therefore be said to have been "admitted" (*Domenici* v. *Johnson,* 10 F. (2d) 433 (C. C. A. 1)), any more than one who enters contrary to the provisions of the Act of 1917 (*Hurst* v. *Nagle,* 30 F. (2d) 346 (C. C. A. 9)). It is true that Georgas could not have been deported when he left in December, 1924; the statute had run in his favor. But again that was not an "admission," even if he was then qualified for admission as prescribed by section thirty-four [1917 Act]. Assuming that that section applied at all to his case, and that the decision of a Board of Special Inquiry upon his arrest would constitute an "admission," no such finding was made; it was too late to make one. His status was still that of one who got in without admission, though it was too late to disturb him. It is true that practically he was in the same position for most purposes as one who had been admitted; we can not agree for that reason that the authorities had passed him, and that appears to us the meaning of the word. * * *

* * * * *

We should have to say either that the original leave was an "admission," or that its breach, when cured by time, became one;

the first is patently untrue, it seems to us too great a strain to say that the second is an equivalent of a decision of the authorities.

Petitioner does not contend that his original entry in 1923 was a lawful admission for permanent residence, and, as the *Georgas* decision holds, it was not converted into such by reason of the fact that he was fortunate in escaping deportation during the applicable statutory period.

Other decisions which may be cited in support of the Government's position are *Zurbrick* v. *Borg,* 47 F. (2d) 690 (C. C. A. 6th); *McCandless* v. *United States ex rel. Pantoja,* 44 F. (2d) 786 (C. C. A. 3d); *Schmucker* v. *Martinez,* 37 F. (2d) 315 (C. C. A. 4th); *United States ex rel. Rios* v. *Day,* 24 F. (2d) 654 (C. C. A. 2d), certiorari denied, 277 U. S. 604; *Ex parte Tatsuo Saiki,* 49 F. (2d) 469 (W. D. Wash.); *United States ex rel. Anderson* v. *Karnuth,* 46 F. (2d) 689 (W. D. N. Y.); *United States ex rel. Harrington* v. *McCandless,* 43 F. (2d) 760 (N. J.); *Ex parte Sturm,* 38 F. (2d) 272 (S. D. N. Y.); *United States ex rel. Bardakos* v. *Mudd,* 33 F. (2d) 334 (Md.).

Petitioner cites several decisions which rest upon the doctrine that an American ship is American territory to support the contention that he did not leave and reenter the country in 1929. But this Court has held in the *Claussen case, supra,* that this doctrine has no application to a case of this kind.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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OCTOBER, 1932.

APPENDIX

STATUTES INVOLVED

Section 11 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780), relating to the survival of actions pending in the courts of the United States, provides:

> (*a*) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.
>
> * * * * *
>
> (*c*) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the ap-

plication therefor and accorded an opportunity to present any objection which he may have.

Section 1 of the Act of August 18, 1894, c. 301, 28 Stat. 372, 391 (U. S. C., Title 8, Sec. 107), provides:

> The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, and until their successors are appointed.

R. S. 178 (U. S. C., Title 5, Sec. 5) provides:

> In case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.

R. S. 179 (U. S. C., Title 5, Sec. 6) provides:

> In any of the cases mentioned in the two preceding sections, except the death, resignation, absence, or sickness of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

R. S. 180 (U. S. C., Title 5, Sec. 7) provides:

> A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than thirty days. * * *

Section 295 of the Criminal Code, originally R. S. 5363 (U. S. C., Title 18, Sec. 486), provides:

> Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

The Immigration Act of 1917, c. 29, 39 Stat. 874, 895, 896, so far as material, provides:

> SEC. 32. That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such

vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act.

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 155, 158, 161, 162, 164, so far as pertinent, reads as follows:

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. (U. S. C., Title 8, Sec. 203.)

SEC. 4. When used in this Act the term "non-quota immigrant" means—

* * * * *

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; * * *. (U. S. C., Title 8, Sec. 204.)

SEC. 10. * * * Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph. (U. S. C., Title 8, Sec. 210 (a).)

SEC. 13. * * * No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. (U. S. C., Title 8, Sec. 213 (a).)

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: * * *. (U. S. C., Title 8, Sec. 214.)

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. (U. S. C., Title 8, Sec. 215.)

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. (U. S. C., Title 8, Sec. 166.)

REGULATIONS OF THE SECRETARY OF LABOR

The Immigration Rules of March 1, 1927, which were in effect at the time of petitioner's last entry, contain the following pertinent provisions:

RULE 6, SUBDIVISION E

PARAGRAPH 1. In addition to the medical examination hereinafter provided for, all seamen arriving in ports of the United

States shall be regularly inspected by immigrant inspectors.

PAR. 4. An alien seeking to enter the United States pursuant to the provisions of subdivision (5) of section 3 of the immigration act of 1924 shall establish to the satisfaction of the proper immigration official at the port of arrival (1) that he is a bona fide seaman; (2) that his name appears on the duly visaed crew list of the vessel on which he arrives; (3) that he is an employee of such vessel and in good faith signed on her articles; (4) that he seeks to enter solely on business of such vessel, or that he seeks to enter solely in pursuit of his calling as a seaman; and (5) that he has no intention to abandon such calling; and where such immigration official is not so satisfied he shall order the owner, charterer, agent, consignee, or master of the vessel on which such alien arrives to detain such alien on board and deport him in the manner required by law: *Provided,* That an alien seaman whose name is not included on a visaed crew list may be allowed to land, if otherwise entitled to land, upon the permission of the Secretary of State.

RULE 6, SUBDIVISION I

PAR. 2. Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after

such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

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